

No. 800 296

APR 12 1902

94300

JAMES D. MAR

The Supreme Court of the United States

CHARLES D. NEWTON, as Attorney-General of the State of New York; ALFRED M. BARRETT, constituting the Public Service Commission of the State of New York, for the First District, and DANA WALLACE, District Attorney of Queens County,

Defendants-Appellants,

vs.

NEW YORK AND QUEENS GAS COMPANY,

Complainant-Respondent.

Motion to Advance

WILBER W. CHAMBERS,

Solicitor for Defendant-Appellant Newton,

Attorney-General,

Capitol, Albany.

TERENCE FARLEY,

Solicitor for Defendant-Appellant Barrett,

49 Lafayette Street,

New York City.

JOHN P. O'BRIEN,

Corporation Counsel,

Solicitor for Wallace,

Municipal Bldg., New York City.

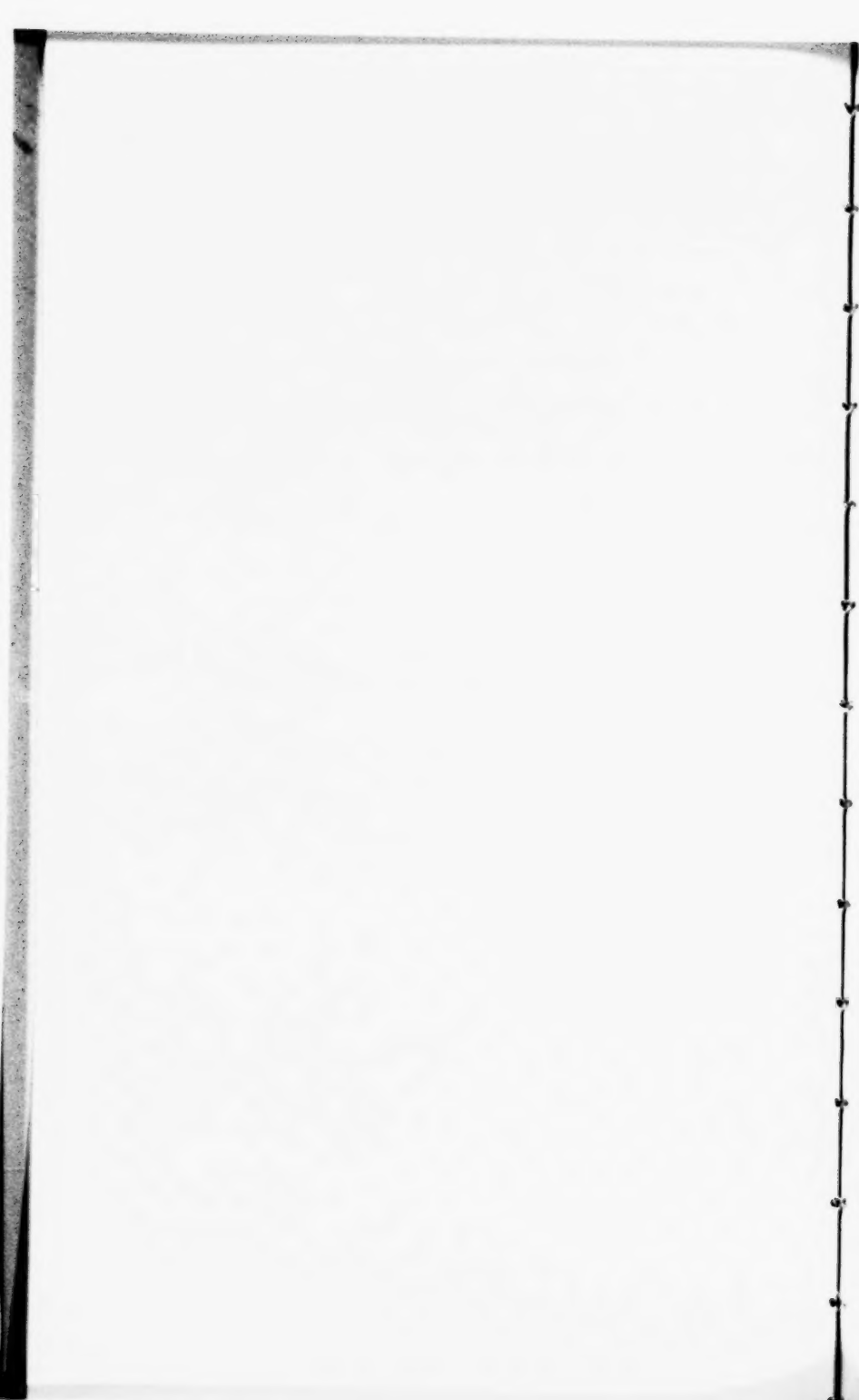
WILBER W. CHAMBERS,

CLARENCE R. CUMMINGS,

ELY NEUMANN,

JAMES A. DONNELLY,

Of Counsel.



The Supreme Court of the United States.

CHARLES D. NEWTON, as Attorney-General of the State of New York; ALFRED M. BARRETT, constituting the Public Service Commission of the State of New York, for the First District; and DANA WALLACE, as District Attorney of Queens County,

Defendants-Appellants,

vs.

NEW YORK & QUEENS GAS COMPANY,

Complainant-Respondent.

Sirs,

PLEASE TAKE NOTICE that we will move the Supreme Court of the United States at Washington, District of Columbia, pursuant to Rule 26 of the Rules of the Supreme Court of the United States, on Tuesday, April 12, 1921, at twelve o'clock noon at the opening of said court for motions, or as soon thereafter as counsel can be heard, for an order advancing the above entitled appeal on the docket of said court for argument at the earliest particular

date during the October Term, 1921, convenient to the court.

Dated, New York, April 4, 1921.

Yours, &c.,

WILBER W. CHAMBERS,
Solicitor for Deft.-Applt. Newton,
Office and P. O. Address:
Capitol, Albany, N. Y.

TERENCE FARLEY,
Solicitor for Deft.-Applt. Barrett,
Office and P. O. Address:
No. 49 Lafayette Street,
New York City.

JOHN P. O'BRIEN,
Corporation Counsel,
Solicitor for Deft.-Applt. Lewis,
Office and P. O. Address:
Municipal Building,
New York City.

To:

SHEARMAN & STERLING,
Solicitors for Complainant-Respondent,
55 Wall St., Borough of Manhattan,
New York City.

THE SUPREME COURT OF THE UNITED
STATES.

CHARLES D. NEWTON, as Attorney-General of the State of New York; ALFRED M. BARRETT, constituting the Public Service Commission of the State of New York, for the First District; and DANA WALLACE, as District Attorney of Queens County,
Defendants-Appellants,

vs.

NEW YORK & QUEENS GAS COMPANY,
Complainant-Respondent.

To the Honorable the Supreme Court of the United States:

1. The appellants above named respectfully move to advance this cause on the docket of this Honorable Court pursuant to Rule 26 of the Rules of the Supreme Court of the United States.

2. The above entitled appeal was brought by the appellants to review the final decree of the District Court of the United States for the Southern District of New York, dated the 19th day of November, 1920, adjudging chapter 125 of the Laws of 1906 of the State of New York confiscatory and unconstitutional in that it deprives complainant-respondent of its property without due process of law, contrary to the Fourteenth Amendment of the United States Constitution. The laws of the State of New York referred to, provided, among other things, that the complainant company shall not charge or receive for gas manufactured, furnished

or sold by it a sum in excess of one dollar (\$1.00) per thousand cubic feet.

3. The final decree appealed from contains a provision that the appellants perfect their appeal with "all convenient speed" and apply to the Supreme Court of the United States to advance the said appeal as follows:

" XI. The plaintiff shall be required to do the acts and things specified in Paragraphs VI, VII, VIII and IX hereof only in case an appeal from this decree is taken by the defendants, or any of them, within thirty (30) days from the entry of this decree, and that the defendants so appealing, and each of them, shall perfect and prosecute any such appeal and print and file the record and all necessary papers to that end, promptly and without delay, and shall, with all convenient speed thereafter, serve a notice of application to the United States Supreme Court to advance the said appeal upon the calendar of the said Court."

4. The complainant company is now charging and collecting the sum of \$1.25 per thousand cubic feet and has been charging and collecting this rate from its consumers since shortly after the entry of the final decree hereinbefore referred to, and in addition the said complainant company is charging and collecting a service charge in the amount of \$.75 per month from each consumer.

5. The final decree appealed from further provided as follows:

" III. Chapter 125 of the laws of 1906 of the State of New York, in so far as it prohibits the plaintiff from charging or receiving more than at the rate of One Dollar (\$1.00) per thousand cubic feet for the sale of gas in the Third Ward of the Borough of Queens, has been, since at

least January 1, 1919, and now is, confiscatory, and deprives the plaintiff of its property without due process of law, contrary to Section 10 of Article 1 of the Constitution of the United States and to the Fourteenth Amendment thereof.

" IV. The said statute has been since at least January 1, 1919, and now is, invalid as violative of the said provisions of the Constitution of the United States; except by injunction the plaintiff has no adequate remedy, at law or otherwise, for any injury resulting from the enforcement of said statute; and the plaintiff is entitled to the relief hereinafter prescribed.

" V. The defendants Charles D. Newton as Attorney-General of the State of New York, Dennis O'Leary as District Attorney of the County of Queens, State of New York, and Lewis Nixon constituting the Public Service Commission of the State of New York for the First District, and each of them, and their, and each of their successors in office, their deputies and attorneys, and their, and each of their successors, servants, and employees, and any and every person acting or purporting to act under and by virtue of the authority of Chapter 125 of the Laws of 1906 of the State of New York or any other provision of law, be, and each of them is, hereby restrained and enjoined from enforcing, and from attempting to enforce, against the plaintiff the provisions of Chapter 125 of the Laws of 1906 or any of them, with respect to the rates which the plaintiff may charge or receive for gas manufactured or sold by it in the Third Ward of the Borough of Queens, or from bringing any action or proceedings in mandamus or by injunction or otherwise for the purpose of compelling compliance by the plaintiff with the said Act, in so far as it fixes or prescribes a rate for gas manufactured or sold by the plaintiff, or from doing any act or thing interfering with the

right or authority of the plaintiff forthwith to charge, bill, collect and receive for such gas any rate which it might lawfully charge or receive if the provisions of the said Act relative to the rate to be charged or received by the plaintiff were not operative.

"VI. In the event that an appeal from this decree is taken by the defendants, or any of them, within the time hereinafter prescribed, the plaintiff shall thereafter and until the bond provided for in Paragraph VIII hereof shall have been cancelled and annulled by order of this Court, keep true and correct accounts and records of all gas sold by it and of all moneys received by it for gas sold by it, so as accurately and completely to show the moneys received by it, for gas sold by it from and after this date, in excess of the sums which would have been received for such gas if the same had been sold at the rate of One Dollar (\$1.00) per thousand cubic feet of gas sold, together with the names and addresses of the consumers from whom such moneys are so collected in so far as such names or addresses are known to the plaintiff or appear upon its books and records; and such accounts and records shall, upon application to this Court, be at all reasonable times open to the inspection and audit of the defendants, their employees, or their successors or representatives.

"VII. If, within the time hereinafter prescribed, an appeal from this decree is taken by the defendants, or any of them, the plaintiff shall, on the 15th day of December, 1920, and on the 15th day of each month thereafter, until the bond provided for in Paragraph VIII hereof shall have been cancelled and annulled or until this Court shall order otherwise, file in the office of the Clerk of this Court a statement, sworn to by its vice-president, secretary or treasurer, showing the money received by it during the preceding month, for gas sold by

it, in excess of the sums which would have been received for such gas if the same had been sold at the rate of One Dollar (\$1.00) per thousand cubic feet, such verified statement also to certify that the sum so shown is all that has been so collected during the preceding month.

" VIII. If, within the time hereinafter prescribed, an appeal from this decree is taken by the defendants, or any of them, within ten days thereafter, the plaintiff shall file with the Clerk of this Court, in form and tenor first approved by this Court, its bond or undertaking, with the Consolidated Gas Company of New York as surety, in the sum hereinafter prescribed, conditioned for the repayment to the consumers of the plaintiff, in the event that this decree is reversed on appeal and it is ultimately decided that the plaintiff is not entitled to judgment in this action, of the respective sums of money received and collected by the plaintiff from such consumers in excess of the sums which would have been received if such gas had been sold and billed at the rate of One Dollar (\$1.00) per thousand cubic feet, together with interest at the rate of six (6) per cent., upon any such excess so collected and repaid, the obligation of such surety upon and under such bond or undertaking to be in the sum of Two Hundred Thousand Dollars (\$200,000).

" IX. Upon filing such bond and thereafter, unless and until this Court shall otherwise direct, the plaintiff shall be entitled to and may retain and use any and all moneys received and collected by it in excess of the sums which would have been received and collected at the said rate of One Dollar (\$1.00) per thousand cubic feet of gas sold. When the excess moneys so received and collected shall aggregate the sum of Two Hundred Thousand Dollars (\$200,000) the defendants, or any of them, may make application to this Court, on three days' notice,

for an additional bond or security and in such form and manner as this Court may direct.

"X. If an appeal from this decree is taken by the defendants, or any of them, and the final judgment entered herein sustains the invalidity of Chapter 125 of the Laws of 1906 as to the plaintiff, the said bond or undertaking shall thereupon and thereby be cancelled or annulled, and the plaintiff and the said Consolidated Gas Company of New York shall thereupon and thereby be relieved from any and all liability thereunder, and appropriate directions accordingly shall be made by this Court."

6. The complainant company serves approximately 11,000 individual consumers in the Borough of Queens, State of New York. There is no adequate remedy for the individual consumer who must pay \$1.25 rate, plus the \$.75 service charge, or submit to having his gas supply cut off. Litigation by an individual consumer with the complainant company can be prosecuted only at so great expense as to become prohibitive. The number of citizens interested in this litigation as well as the amount involved is unusually large.

7. This is the third case in which an appeal has been taken to this Honorable Court from a final decree adjudging gas rates fixed by the legislature of the State of New York confiscatory and unconstitutional. This Honorable Court granted a motion made on behalf of the appellants to advance the Consolidated Gas Company case and set the said case down for argument on the 10th of October, 1921. In the case of Charles D. Newton, as Attorney-General of the State of New York, *et al.*, against The Kings County Lighting Company, the appellants are moving to advance the said case upon the docket of this Honorable Court. Practi-

cally all of the reasons given for the advancement of the Consolidated Gas Company case and the Kings County Lighting Company case are equally applicable to the instant application.

WHEREFORE, your petitioners ask this Honorable Court for an order or direction advancing the above-entitled appeal on the docket of the said court for argument at some date convenient to this court during the October Term, 1921.

Dated, April 4, 1921.

WILBER W. CHAMBERS,
Solicitor for Defendant Newton,

TERENCE FARLEY,
Solicitor for Defendant Barrett,

JOHN P. O'BRIEN,
Corporation Counsel and Solicitor for Defendant Wallace.

WILBER W. CHAMBERS,
CLARENCE R. CUMMINGS,
ELY NEUMANN,
JAMES A. DONNELLY,
Of Counsel.

Supreme Court of the United States

October Term, 1931

No. 2076

CHARLES L. HARRISON, as Attorney General of the State of New York
and ALFRED M. BARRETT, Commissioner and Public Service Commissioner
of the State of New York, Petitioners

Respondents

vs.

NEW YORK AND NEWJERSEY GAS COMPANY

NOTICE FOR REASSIGNMENT AND AFFIDAVIT

JOHN A. GARVIN,

Commissioner of the State of New York,

do hereby certify

that the within

Supreme Court of the United States,

OCTOBER TERM, 1921.

CHARLES D. NEWTON, as Attorney
General of the State of New York,
and ALFRED M. BARRETT, consti-
tuting the Public Service Commis-
sion of the State of New York,
First District,

Appellants,

AGAINST

NEW YORK AND QUEENS GAS
COMPANY,

Respondent.

No. 296.

TAKE NOTICE, that on October 4, 1921, at the opening of court on that day, in the Supreme Court Room, Washington, D. C., the respondent will move this Court, on the records of the above named case, the annexed affidavit of Charles A. Vilas and on all the proceedings had in said case, for an order reassigning said case for argument upon November 14, 1921, or such other date as may suit the convenience of the court, for the reason that appellants have failed to serve their brief upon

the Appellee as required by Rule 22 of the rules of this court and to enable the case to be heard with other cases involving the same principle; and for such other and further relief as to the Court shall seem just and proper.

New York, September 24, 1921.

JOHN A. GARVER,
Counsel for Respondent,
55 Wall Street,
New York City.

To:

WILBER W. CHAMBERS, Esq.,
Counsel for Appellant Newton.
JOHN P. O'BRIEN, Esq., Corporation Counsel,
Counsel for Appellant Wallace.

SUPREME COURT OF UNITED STATES.

OCTOBER TERM, 1921.

CHARLES D. NEWTON, Attorney-General
of the State of New York and
ALFRED M. BARRETT, constituting the
Public Service Commission of the
State of New York for the First
District,

Appellants,

AGAINST

NEW YORK AND QUEENS GAS COMPANY,
Respondent.

No. 296.

Affidavit of Charles
A. Vilas.

STATE OF NEW YORK }
County of New York } :

CHARLES A. VILAS, being duly sworn says:

1. I am an attorney-at-law, associated with the firm of Shearman & Sterling, solicitors for the respondent in the above entitled cause, and I am familiar with all the proceedings which have been had in this suit.

2. This appeal is by the defendants from a decree of the District Court of the United States for the Southern District of New York, dated November 19, 1920, adjudging confiscatory and void Chapter 125 of the Laws of New York for 1906, which limited the rate to be charged for gas in the third ward of the Borough of Queens, City of New York, to \$1.00 per thousand cubic feet.

3. This case was advanced for argument and set for October 10, 1921, by order of this Court made April 18, 1921, upon motion of the appellants. The case is the sixteenth case on the call of this Court for that day. The record in this case is in four volumes, and comprises 1,880 pages. The issues involved are similar to those involved in case No. 257, Newton, Attorney-General, *et al. v.* Consolidated Gas Company, and case No. 295, Newton, Attorney-General, *et al. v.* Kings County Lighting Company; all of said cases involving the provisions of the statute of the State of New York, limiting the rate to be charged for gas in various portions of the City of New York. A motion to consolidate cases 257, 258 and 259 and to reset said cases for another date, is presented concurrently herewith.

4. I am informed and believe that it is the intention of the solicitor for the appellant Attorney-General and of the solicitor for the appellant Dana Wallace, who has been substituted as District Attorney of the County of Queens as a defendant, to file separate briefs in this suit. Neither of said parties has served any brief on behalf of either of the appellants in this case upon the solicitors for the respondent. The appellants have filed sixty-five assignments of error in this suit; and it is impossible for solicitors for respondent to determine in advance of receipt of appellants' brief what assignments of error appellants intend to rely upon, or to prepare a brief on behalf of respondent. In view of the size of the record and the probable size of the briefs to be filed by appellants, and the magnitude and importance of the questions involved, counsel for appellee will require the full time

allowed by the rules of this Court in which to serve briefs in reply to the points to be made the appellants.

WHEREFORE, the respondent moves the Court to reassign this case for argument on November 14, or on such day as the court shall set for the argument of Nos. 257, 258 and 288; and for such other and further relief as to the court shall seem just and proper.

Sworn to before me this 24th }
day of September, 1921. }

Charles A. Vilas

Arthur C. Power

NOTARY PUBLIC, KINGS COUNTY
NOTARY NO. 127 REGISTERED NO. 3508
N. Y. CO. CLERK'S NO. 9 REG. NO. 301
N. Y. CO. CLERK'S NO. 7 REG. NO. 22
TERM EXPIRES MARCH 30, 1923